REMARKS

Claims 1-18 were pending in the Office Action. Upon entry of the present paper, claims 15 and 18 are canceled, claims 1-9, 11 and 16-17 are amended, and new claims 19-22 are added. No new matter is added.

In the Office Action, the specification was objected to for an improper Abstract, a figure label omitting the phrase "Prior Art," and a number of claims for the phrase "so that." Applicant submits that these objections are rendered moot in view of the present submission, which includes a substitute Abstract sheet, replacement figure, and claim amendments removing the phrase "so that."

Claims 1-8 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant submits that this rejection is also rendered moot in view of the amended claims presented herein.

Claim 15 was rejected under 35 U.S.C. 101 for reciting non-statutory subject matter. That claim has been canceled, and claim 16 has been amended to recite a computer readable medium.

Turning now to the art-based rejections, all claims stand rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged combination of allegedly admitted prior art in the present application and Chuah, et al. (U.S. Patent No. 6,515,994).

Independent Claim 9 and Dependent Claims 10-14, 16, 19 and 21

Original claim 9 recited, among other features, the following: "wherein the group is limited to further hosts with a same locational area as the first host." The Office Action alleges

that Applicant's specification, at paragraphs 6 and 7, allegedly admits that such a feature is already in the prior art. However, no such admission is made. To the contrary, those paragraphs make no mention whatsoever of limiting a group to hosts with a same locational area as the first host. Indeed, those paragraphs do not even refer to a "locational area" at all. If this rejection is maintained, Applicant requests clarification as to where, precisely, the allegedly-admitted prior art "locational area" is found.

The other reference, Chuah et al., is not cited as showing this feature, and upon a review, Applicant submits that Chuah et al. fails to teach or suggest any modification to the prior art system in Applicant's Figure 1 that would overcome the deficiency identified above. For at least these reasons, Applicant submits that original claim 9 distinguishes over the applied references. Claims 10-14, 16, 19 and 21 depend from claim 9, and are distinguishable for at least the same reasons as claim 9, and further in view of the various features recited therein. For example, claim 11 recites the following:

> wherein one or both of the request and the file is transmitted between the network element and the first host via a cellular communications network and the locational area is defined in terms of a cell, and the group is limited to hosts situated in an area covered by a single cell

The Office Action cites Applicant's Figure 1, elements 5 and 8, and paragraph 4 as allegedly admitting that such a group is limited to hosts situated in an area covered by a single cell. Office Action, p. 7-8 (addressing claim 3). Applicant's specification makes no such admission. In Figure 1, element 5 is simply the radio access network. This is briefly described in paragraph 4, and nowhere in that description is there any reference to a cell, or an area covered by a single cell, as recited. Indeed, paragraph 4 expressly refers to multiple transmitters 8 being in the system. What is allegedly the admitted cell, and where is there an admission as to limiting

the group to hosts situated in an area covered by a <u>single</u> cell, as recited? Applicant submits that no such admission is made.

As another example, claim 12 recites "further comprising encrypting information in headers of the data packets relating to the correct order of data packets in the file delivery transmission." To reject this claim (by reference to claim 5), the Office Action takes official notice that header encryption was well-known in the art at the time of the invention. Applicant respectfully disagrees. While the concept of header encryption referenced in the Office Action may be better known today, the present application has a priority date as early as 2002, and Applicant submits that the alleged header encryption was not so commonly known, and respectfully requests under MPEP 2144.03 that the Examiner provide evidence in the next Office Action to support the Official Notice.

As another example, claim 13 recites "where a further host has submitted a request during the file delivery transmission, logging the point in the file delivery transmission at which said further host joins the group." The Office Action again takes official notice, this time alleging that the general concept of logging was known. Applicant submits that, even assuming that logging communications in general was known, there is no need in Chuah et al. for such an action. Chuah et al. notes that some clients may miss blocks when they join during the datacast, and it is up to those clients to transmit a status signal indicating that not all blocks were received. Chuah et al., col. 5, line 64 – col. 6, line 3. There is no need to modify Chuah et al. in the manner suggested, because to do so would simply waste resources, and doing so would impermissibly change the principal of operation by which the Chuah et al. system operates (without logging).

As another example, new claim 19 recites "after all hosts in the group have successfully

received the file, maintaining the group active for a predetermined amount of time; and

terminating the group after the predetermined amount of time if no additional host issues a

request for the file." Chuah et al. offers no teaching or suggestion of such a predetermined

amount of time (see col. 7, lines 51-55 – server terminates the TCP connection once the last

client separates from the tree), and Applicant's specification makes no admission in this regard.

And as another example, new claim 21 recites "wherein each host in the group is

allocated an amount of bandwidth on a network on which the file delivery transmission occurs,

and the processor is further configured to: share allocated bandwidth of multiple hosts in the

group to increase a data transfer rate experienced by the hosts in the group." No such sharing or

increase in a data transfer rate is shown in the cited reference. For example, each new client in

Chuah et al. that joins the multicast establishes its own separate TCP connection. Chuah et al.,

col. 5, line 46 (total of N+1 connections for N clients).

Independent Claim 1, and Dependent Claims 2-8, 20 and 22

Amended independent claim 1 recites, among other features, the following:

> c) receive a second request for the file from a second host during
> file delivery transmission of the requested file to the first host;
>
> d) determine whether the second host is situated with a locational
> area of the first host; and
>
> e) if the second host is situated within the locational area of the
> first host, add the second host to the multicast delivery group, and
> transmit a remaining portion of the requested file to both first and
> second hosts after adding the second host to the multicast delivery
> group

None of the applied references teach or suggest such an apparatus, which is configured to

"determine whether the second host is situated with a locational area of the first host." As

discussed above, the Office Action cites a portion of Applicant's specification as allegedly admitting a locational area, but no such admission is made, and no such feature is shown in Chuah et al., either.

Claims 2-8, 20 and 22 depend from claim 1, and are distinguishable for at least the same reasons as claim 1, and further in view of the various features recited therein. For example, the comments regarding claims 11, 12, 19 and 21 above apply as well, to the extent the claims recite similar features, to claims 3, 5, 20 and 22, respectively.

Independent Claim 17

Amended independent claim 17 recites, among other features, the following:

> sending to a network element via a cellular telecommunication network a request to join a group;
>
> receiving, via a different communication network from said cellular telecommunication network, a start packet transmitted by the network element which configures a connection between the network element and the host

None of the applied references teach or suggest the claim 17 method, with the above features. Chuah et al. does not describe using a cellular telecommunication network to request to join the group. To the contrary, Chuah et al.'s Figure 4 structure shows the use of the same network for both the request and the TCP connection.

CONCLUSION

Applicant submits that pending claims 1-14, 16-17 and 19-22 distinguish over the applied references, and are in condition for allowance. However, if the Examiner feels that additional discussion and/or amendment would be helpful, the Examiner is invited to telephone Applicant's undersigned representative at the number appearing below.

Respectfully submitted,
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